

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**ST. PAUL FIRE and MARINE
INSURANCE COMPANY, et al.,**

Plaintiffs,

v.

CATERPILLAR, INC., et al.,

Defendants.

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CIVIL ACTION NO. 10-0312-CG-C

ORDER

This matter is before the court on the Report and Recommendation of the Magistrate Judge (Doc. 41), plaintiffs' objection thereto (Docs. 42), the response thereto of defendant Covertteam Inc.'s (Doc. 50), the response of defendant Caterpillar Inc. (Doc. 51), and the response of defendant Thompson Tractor Co., Inc. (Doc. 52). Upon a de novo review of those portions of the report and recommendation to which objection is made, the undersigned declines to adopt the Report and Recommendation and finds that remand is appropriate.

This action was removed to this court from the Circuit Court of Mobile County, Alabama by defendants Covertteam, Inc., Caterpillar Inc. and Thompson Tractor Co., Inc., who each filed separate notices of removal on June 18, 2010. (Docs. 1, 3, 4). There are two related cases, Bender Shipbuilding & Repair Co., Inc. v. Caterpillar, Inc., et al., (CV-10-92-CG-C) and Seacor Marine, LLC v. Caterpillar, Inc., et al., (CV-10-306-CG-C), which have similar Report and Recommendations with regard to motions to remand. This court found in the Bender case that that action could not have been brought in federal court pursuant to federal admiralty jurisdiction and

that the requisites for mandatory abstention, under 28 U.S.C. § 1334(c)(2), had been met. The circumstances supporting mandatory abstention in the Bender case are virtually identical to the facts of this case. Accordingly, for the same reasons stated in Bender, the court finds that mandatory abstention applies to this action.¹ The court further found in the Bender case that the case was also due to be remanded for discretionary and equitable reasons. While some of the equitable considerations in this case differ from those in Bender,² the court still finds that this case should also be remanded for predominantly the same discretionary and equitable reasons stated in the Bender case.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the report and recommendation to which objection is made, the undersigned declines to adopt the Report and Recommendation of the Magistrate Judge. It is **ORDERED** that plaintiffs' motion to remand (Doc. 19) is **GRANTED** and this case is hereby **REMANDED to the Circuit Court of Mobile County, Alabama.**

DONE and ORDERED this 16th day of April, 2012 .

/s/ Callie V. S. Granade
UNITED STATES DISTRICT JUDGE

¹ . The clerk is directed to attach a copy of the Bender order entered this date as an exhibit hereto.

² The most notable difference is that in Bender all of the parties and claims were not properly removed to this court.